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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00752/2017

Wednesday, this the 17th day of July, 2019

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

P.Purushothama Das
S/o.Late P.Parameswaran, aged 60 years
retired Track Maintainer
Office of the Senior Section Engineer, P-Way
Varkala, Trivandrum Division
Indian Railway, Residing at Vishnu Bhavan
Venpakkal P.O, Anthiyannur, Trivandrum – 695 123 **Applicant**

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

1. Union of India, represented by the General Manager
Southern Railway, Head Quarters Office
Park Town P.O, Chennai -3
2. The Chief Personnel Officer, Southern Railway
Head Quarters Office, Park Town P.O
Chennai- 3
3. The Senior Divisional Personnel Officer
Southern Railway
Trivandrum Division
Trivandrum – 695 014 **Respondents**

(By Advocate – Mr.K.G.Mathews)

This application having been heard on 3rd July, 2019, the Tribunal on 17.07.2019 July, 2019 delivered the following :

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

OA No.752/2017 is filed by Shri P.Purushothama Das, retired Track Maintainer, Office of the Senior Section Engineer, Trivandrum Division,

Indian Railways. He is aggrieved by the inaction on the part of the respondents to grant him notional appointment with effect from the date of regular appointment of candidates with less length of service as on the relevant date at least for the purpose of pension. The relief sought in the OA are as follows:

- (i) To direct the Respondents to consider the claim for notional service to the Applicant with effect from March, 2003 and to grant consequent benefits by including him into the Statutory Pension Scheme disbursing monthly salary and other retiral benefits.
- (ii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (iii) Grant the cost of this Original Application.

2. In the OA, it is submitted that the applicant was initially appointed as Khalasi by the Respondents and had worked continuously for 678 days including 633 workings days as evidenced in the extract of the casual labour service card, copy of which is produced as Annexure A1. In compliance with the decision of the Hon'ble Supreme Court which is reported in **1985 SCC (L&S) 526**, the respondents were required to prepare a Divisional list of all project casual labourers in each Division of Railways who had been retrenched. The rights of those who were retrenched prior to 1981 were thus considered. Subsequently, a second list was also prepared as a supplementary one including those who were retrenched up to 01.01.1991. By order in OA No.706/1994 which was disposed of by this Tribunal, a direction was issued to merge both the lists in the order of number of days worked by them and make future appointments with effect from 01.07.1996 from the said list. However, appointments made up to 01.07.1996 were ordered not to be disturbed. The applicant made his request to the 3rd

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Respondent through a representation dated 20.03.1987, a copy of which is at Annexure A2.

3. However, when the merged seniority list was published the applicant found that he was not included in the same. Depending on the fact that he had worked for 633 working days he ought to have been included just above Sl.No.2111 in the merged seniority list which was released on 02.09.1997, a copy produced as Annexure A4. The applicant again approached the competent authorities seeking inclusion in the list by submitting a representation dated 25.04.2000. In March 2013, orders were issued giving appointment to all those who fell between Sl.Nos.1878 to 2190 in Annexure A4 merged seniority list, as per the direction dated 24.03.2003 issued by 3rd Respondent, copy of which is produced at Annexure A6.

4. Aggrieved by the continued non-inclusion of the applicant he approached this Tribunal by filing OA No.600/2008. By order dated 15.06.2009, this Tribunal allowed his request, copy of which is available at Annexure A7. In consequence, the applicant was appointed as MTS with effect from 11.09.2009 (Annexure A8).

5. Although the respondents had complied with the Annexure A7 order of the Tribunal. The applicant was not extended notional service with effect from the date of eligibility. His representation filed for the purpose, copy of which is at Annexure A9, elicited no reply. The applicant retired from service on attaining 60 years of age. He had put in 7 years, 8 months and 90

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days of service from 11.09.2009 to 31.05.2017. On comparing his entitlement with those who had put in similar number of days of service, he was at least entitled to statutory pension as one who is declared to be in service prior to 01.01.2004. A further representation was filed by the applicant dated 16.01.2017 (Annexure A10) which also elicited no reply. The applicant goes on further to state that on the question of entitlement for statutory pension, the matter of reckoning service from the date of eligibility was considered favourably by this Tribunal in favour of employees like the applicant in OA No.37/2009 and confirmed by the Hon'ble High Court in Writ Petition No.23757/2010, a copy of the Hon'ble High Court's order dated 21.12.2016 is at Annexure A11.

6. The respondents have filed a reply statement in which the only substantive point raised is the issue of delay in filing the OA. It is stated that the applicant had been appointed in the year 2009 itself and he had approached this Tribunal only after 9 years without adducing any cogent reason for the abnormal delay. Various judicial pronouncements have been cited by the respondents to the effect that an employee who is not diligent in seeking redressal of alleged injustice does not deserve any redressal. He had worked till 2017 when he superannuated from service. Even at that stage the applicant did not find it necessary to approach his seniors taking up his case. In the additional reply filed also, the same issue has been reiterated pointing out that there is no explanation for the long delay on the part of the applicant in seeking redressal.

7. We have heard Shri V.Sajith Kumar, learned Counsel for the applicant and Shri K.G.Mathews, Standing Counsel for the respondents. The issue lies in a narrow compass. It is undisputed that the applicant has put in 633 working days before his retrenchment as is seen from Annexure A1. It is also true that in the combined list of merged seniority of Casual Labours who had been retrenched, another person who has spent 633 days, is placed at Sl.No.2111. Clearly the applicant has a case that he ought to find a place in the same position. In any case this Tribunal had discussed his eligibility for inclusion in the list in some detail in its order, copy of which is available at Annexure A7. The operative part of judgment reads as below:

“8. Arguments were heard and documents perused. Admittedly, annexure A-1 casual labour card and its enclosures are not in dispute. It is stated that the applicant is in possession of various originals. The respondents appear to have omitted to take action after receipt of Annexure A2. It is trite law that no one can take advantage of his own mistake or omissions. (Bholonath Vs. Monika, 2007 (14) SCC 302). Again equally it is the order that a person should not be penalised for no fault of his. (Mohd Gazi Vs. State of Madhya Pradesh 2000(4) SCC 342). In the instant case all that the applicant could do and expected to do, is to apply for regularization and wait for the response of the respondents, which he did. A number of communications were stated to have been sent by him and a few have been made as a part of the pleadings as well. None of the representation had evinced any response from the Department. Thus it is evident that the respondents have not taken any action at all to any of the communications made by the applicant. It is not denied that the applicant's case is identical to that of other cases vide Annexure A-5. As such, the Department having not taken prior action at the appropriate time the applicant should not be penalized.

9. In view of the above, this OA is allowed. The applicant is entitled to have his name registered in the Casual Labour Live Register and taking into account his past services of 632 days of casual service, he is eligible for regularization. As, according to the applicant a large number of persons with lower seniority have already been regularised, respondents shall take suitable steps to regularize the service of the applicant by strictly ensuring the fulfillment of the conditions attached to such regularization, such as medical examination etc. If the applicant is found medically fit for any Group 'D' post, he shall be considered for the same. The applicant shall cooperate with the Department in furnishing necessary details. This order shall be complied with within a period of six weeks from the date of communication of this order. No costs.

8. At this point of time the applicant is seeking his only benefit which is for consideration of his name as a pre 01.01.2004 employee so that he can take advantage of the CCS (Pension) Rules, 1972, which is statutory one. The very same issue of similarly placed employees has been considered in the judgment of the Hon'ble High Court, copy of which is available at Annexure A11. The Hon'ble High Court goes on to state:

20. In O.P. (CAT) 30 of 2016, as per Ext.P3 order passed by the Tribunal, date of regularisation has been ordered to be reckoned with reference to the date of regularisation given to the juniors, however making it clear that arrears shall be paid only from 06.02.2009, the date of filing the OA. In O.P.(CAT) 45 OF 2016, Ext.P4 order passed by the Tribunal directs the date of regularisation to be reckoned from 2003 for granting pension and other retirement benefits. In these cases also, the orders passed by the Tribunal will stand modified and confined to the extent as declared above.

21. In all the above cases, except O.P (CAT) 45 OF 2016, the applicants were stated as seniors to the person by name Viswanathan (in whose case, the benefit was ordered to be given by the Tribunal as per the verdict in OA 615 of 2004 (Ext.P6 in W.P.(C)23757 of 2010) and even according to the Department, Viswanathan, by virtue of placement in the merged list placed at Sl.No.2134, was entitled to be regularised from 3.11.2003. In the case of the applicant in O.P (CAT) 45 of 2016, the applicant was junior to Viswanathan. But the fact remains that he was also called for considering regularisation in the year 2003 itself, but was denied the benefit, stating that he had already crossed the age limit. As the age factor has been rightly intercepted, he is also entitled to be treated as regularised in 2003. To have uniformity in all the matters, we find it appropriate to reckon 03.11.2003 as the date for regularisation in service (the date on which actual regularisation could have been given to Viswanathan). We also make it clear that, such date of regularisation will be only for the purpose of reckoning the 'qualifying service' for determining the eligibility for getting pension under the CCS (Pension) Rules 1972 and it will not result in payment of any arrears or such other monetary benefits, either towards salary or pensioner such other heads. The actual pension and terminal benefits payable will depend upon the actual salary drawn by the applicants at the relevant time. The Writ Petitions and Original petitions are allowed in part. No costs."

9. Clearly the applicant has merit in his claim that he is entitled for similar treatment. The only ground raised against his argument is the fact that there is undue delay in taking up the case. But he is a pensioner and his plea for inclusion in the statutory pension scheme will have continuing

impact on his post retirement benefits. So the question of delay is not such as to make him ineligible in his claim. The OA succeeds. The applicant is to be included at Sl.No.2111 in the merged seniority on notional basis and is to be considered for inclusion in the statutory pension scheme in existence for employees admitted into service before 01.01.2004. However, it is clarified that he is entitled to no other benefit other than this. No costs.

**(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in OA No.752/2017

Annexure A1 - A true copy of the casual labor service card issued to the applicant

Annexure A2 - A true copy of the representation dated 20.3.1987 submitted by the applicant to the 3rd respondent

Annexure A3 - A true copy of the acknowledgment cards dated 23.3.1987 received by the applicant

Annexure A4 - A true copy of the relevant pages of the Merged Seniority list released as on 2.9.1997

Annexure A5 - A true copy of the representation dated 25.4.2000 submitted by the applicant to the 3rd respondent along with its acknowledgment card

Annexure A6 - A true copy of the letter Nov/P.407/1/ECL/Vol.X dated 24.03.2003 issued by the 3rd Respondent.

Annexure A7 - A true copy of the Order dated 15/06/2009 in OA No.600/2008 of the Central Administrative Tribunal; Ernakulam Bench.

Annexure A8 - A true copy of offer letter No.V/P.407/I/ECL/Vol.XI dated 24/08/2009 issued by the 3rd Respondent.

Annexure A9 - A true copy of the Representation dated 12/01/2010 submitted by the Applicant to the 3rd Respondent.

Annexure A10 - A true copy of the Representation dated 16/1/2017 submitted by the Applicant to the 1st Respondent.

Annexure A11 - A true copy of the judgment dated 21/12/2016 in WP(C) 23757/2010 of the Hon'ble High Court of Kerala.

Annexure A12 - A true copy of the Order No.V/P.407/I.CL/Engg./Court Cases dated 20/03/2018 issued by the 3rd Respondent.

Annexure A13 - a true copy of the Order dated 18/02/2010 in OA 37/209 by this Hon'ble Tribunal obtained from the website of CAT.

Annexure R1 - True copy of O.O.No.116/2009/WP dated 09.09.2009.

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